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UNITED STATES OF AMERICA

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOSE VIERA,

Defendant.

No. CR 2:22-cr-00211-ODW

PLEA AGREEMENT FOR DEFENDANT  
JOSE VIERA

1. This constitutes the plea agreement between Defendant JOSE VIERA ("defendant") and the United States Attorney's Office for the Central District of California ("USAO") and the Civil Rights Division (CRT) of the U.S. Department of Justice (collectively the "United States") in connection with the investigation of a criminal civil rights violation. This agreement is limited to the USAO and CRT and

1 cannot bind any other federal, state, local, or foreign prosecuting,  
2 enforcement, administrative, or regulatory authorities.

3 DEFENDANT'S OBLIGATIONS

4 2. Defendant agrees to:

5 a. Give up the right to indictment by a grand jury and,  
6 at the earliest opportunity requested by the United States and  
7 provided by the Court, appear and plead guilty to a single count  
8 information in the form attached to this agreement as Exhibit A or a  
9 substantially similar form, which charges defendant with Deprivation  
10 of Rights under Color of Law Resulting in Bodily Injury, in violation  
11 of 18 U.S.C. § 242.

12 b. Not contest the Factual Basis agreed to in this  
13 agreement.

14 c. Abide by all agreements regarding sentencing contained  
15 in this agreement.

16 d. Appear for all court appearances, surrender as ordered  
17 for service of sentence, obey all conditions of any bond, and obey  
18 any other ongoing court order in this matter.

19 e. Not commit any crime; however, offenses that would be  
20 excluded for sentencing purposes under United States Sentencing  
21 Guidelines ("U.S.S.G." or "Sentencing Guidelines") § 4A1.2(c) are not  
22 within the scope of this agreement.

23 f. Be truthful at all times with the United States  
24 Probation and Pretrial Services Office and the Court.

25 g. Pay the applicable special assessment at or before the  
26 time of sentencing unless defendant has demonstrated a lack of  
27 ability to pay such assessments.

THE UNITED STATES' OBLIGATIONS

3. The United States agrees to:

a. Not contest the Factual Basis agreed to in this agreement.

b. Abide by all agreements regarding sentencing contained in this agreement.

c. At the time of sentencing, provided that defendant demonstrates an acceptance of responsibility for the offense up to and including the time of sentencing, recommend a two-level reduction in the applicable Sentencing Guidelines offense level, pursuant to U.S.S.G. § 3E1.1, and recommend and, if necessary, move for an additional one-level reduction if available under that section.

d. Except for criminal tax violations (including conspiracy to commit such violations chargeable under 18 U.S.C. § 371), not further criminally prosecute defendant for violations of 18 U.S.C. § 242 and violations of Chapter 109A offenses (sexual abuse) of Title 18, arising out of defendant's conduct described in the agreed-to factual basis set forth in paragraph 11 below. Defendant understands that the United States is free to criminally prosecute defendant for any other unlawful past conduct or any unlawful conduct that occurs after the date of this agreement. Defendant agrees that at the time of sentencing the Court may consider the uncharged conduct in determining the applicable Sentencing Guidelines range, the propriety and extent of any departure from that range, and the sentence to be imposed after consideration of the Sentencing Guidelines and all other relevant factors under 18 U.S.C. § 3553(a).

NATURE OF THE OFFENSE

4. Defendant understands that for defendant to be guilty of the crime charged in the information that is, Deprivation of Rights under Color of Law, in violation of Title 18, United States Code, Section 242, the following must be true: (1) defendant deprived victim J.P. of a right secured by the Constitution or laws of the United States, namely, her constitutional right not to be subjected to cruel and unusual punishment; (2) defendant acted willfully, that is, the defendant committed such acts voluntarily and intentionally, and with the specific intent to do something the law forbids, that is, with a bad purpose to disobey or disregard the law. ; and (3) defendant acted under the color of law.

5. Defendant understands that for defendant to be subject to the statutory maximum sentence set forth below, the government must prove beyond a reasonable doubt that bodily injury resulted from defendant's conduct. Defendant admits that his conduct, in fact, resulted in bodily injury.

## PENALTIES AND RESTITUTION

6. Defendant understands that the statutory maximum sentence that the Court can impose for a violation of Title 18, United States Code, Section 242 (Deprivation of Rights under Color of Law Resulting in Bodily Injury), is: 10 years' imprisonment; a three-year period of supervised release; a fine of \$250,000 and a mandatory special assessment of \$100.

7. Defendant understands that supervised release is a period of time following imprisonment during which defendant will be subject to various restrictions and requirements. Defendant understands that if defendant violates one or more of the conditions of any supervised

1 release imposed, defendant may be returned to prison for all or part  
2 of the term of supervised release authorized by statute for the  
3 offense that resulted in the term of supervised release, which could  
4 result in defendant serving a total term of imprisonment greater than  
5 the statutory maximum stated above.

6 8. Defendant understands that, by pleading guilty, defendant  
7 may be giving up valuable government benefits and valuable civic  
8 rights, such as the right to vote, the right to possess a firearm,  
9 the right to hold office, and the right to serve on a jury. Defendant  
10 understands that he is pleading guilty to a felony and that it is a  
11 federal crime for a convicted felon to possess a firearm or  
12 ammunition. Defendant understands that the conviction in this case  
13 may also subject defendant to various other collateral consequences,  
14 including but not limited to revocation of probation, parole, or  
15 supervised release in another case and suspension or revocation of a  
16 professional license. Defendant understands that unanticipated  
17 collateral consequences will not serve as grounds to withdraw  
18 defendant's guilty plea.

19 9. Defendant understands that, if defendant is not a United  
20 States citizen, the felony conviction in this case may subject  
21 defendant to: removal, also known as deportation, which may, under  
22 some circumstances, be mandatory; denial of citizenship; and denial  
23 of admission to the United States in the future. The Court cannot,  
24 and defendant's attorney also may not be able to, advise defendant  
25 fully regarding the immigration consequences of the felony conviction  
26 in this case. Defendant understands that unexpected immigration  
27 consequences will not serve as grounds to withdraw defendant's guilty  
28 plea.



1 positioned himself with the front of his body pressing against victim  
2 J.P.'s back. Defendant proceeded to touch victim J.P.'s breasts and  
3 pull her shorts and underwear down. Defendant then penetrated her  
4 anus with his penis, even though she told him that she did not want  
5 him to do so. Victim J.P. feared physical harm from defendant as it  
6 was happening, and in fact, defendant's conduct resulted in bodily  
7 injury to victim J.P. in the form of anal soreness and pain. In  
8 performing this act, defendant did so willfully, that is, the  
9 defendant knew his conduct was against the law but engaged in such  
10 conduct anyway.

11 Subsequent analysis of stained sheets from the victim's bed  
12 revealed the presence of defendant's semen. When federal agents from  
13 the Federal Bureau of Investigation and U.S. Department of Justice  
14 Office of Inspector General conducted a voluntary interview of  
15 defendant, defendant falsely claimed that he never ejaculated while  
16 at MDC-LA in order to obstruct and impede the investigation into his  
17 conduct.

#### 18 SENTENCING FACTORS

19 12. Defendant understands that in determining defendant's  
20 sentence the Court is required to calculate the applicable Sentencing  
21 Guidelines range and to consider that range, possible departures  
22 under the Sentencing Guidelines, and the other sentencing factors set  
23 forth in 18 U.S.C. § 3553(a). Defendant understands that the  
24 Sentencing Guidelines are advisory only, that defendant cannot have  
25 any expectation of receiving a sentence within the calculated  
26 Sentencing Guidelines range, and that after considering the  
27 Sentencing Guidelines and the other § 3553(a) factors, the Court will  
28 be free to exercise its discretion to impose any sentence it finds

1 appropriate up to the maximum set by statute for the crime of  
2 conviction.

3 13. Defendant and the USAO agree to the following applicable  
4 Sentencing Guidelines factors:

5 Base Offense Level: 30 U.S.S.G. §§ 2H1.1, 2A3.1

6 Specific Offense  
7 Characteristics:

8 Care, Custody, or Supervisory  
Control 2 U.S.S.G. § 2A3.1(b) (3)

9 Color of Law 6 U.S.S.G. § 2H1.1(b)

10 Adjustments:

11 Vulnerable Victim 2 U.S.S.G. § 3A1.1(b) (1)

12 Defendant and the United States reserve the right to argue that  
13 additional specific offense characteristics, adjustments, and  
14 departures under the Sentencing Guidelines are appropriate.

15 Defendant understands that there is no agreement as to defendant's  
16 criminal history or criminal history category.

17 14. Defendant and the United States reserve the right to argue  
18 for a sentence outside the sentencing range established by the  
19 Sentencing Guidelines based on the factors set forth in 18 U.S.C.  
20 § 3553(a) (1), (a) (2), (a) (3), (a) (6), and (a) (7).

21 WAIVER OF CONSTITUTIONAL RIGHTS

22 15. Defendant understands that by pleading guilty, defendant  
23 gives up the following rights:

- 24 a. The right to persist in a plea of not guilty.  
25 b. The right to a speedy and public trial by jury.  
26 c. The right to be represented by counsel -- and if  
27 necessary have the Court appoint counsel -- at trial. Defendant  
28 understands, however, that, defendant retains the right to be



1 represented by counsel -- and if necessary have the Court appoint  
2 counsel -- at every other stage of the proceeding.

3 d. The right to be presumed innocent and to have the  
4 burden of proof placed on the government to prove defendant guilty  
5 beyond a reasonable doubt.

6 e. The right to confront and cross-examine witnesses  
7 against defendant.

8 f. The right to testify and to present evidence in  
9 opposition to the charges, including the right to compel the  
10 attendance of witnesses to testify.

11 g. The right not to be compelled to testify, and, if  
12 defendant chose not to testify or present evidence, to have that  
13 choice not be used against defendant.

14 h. Any and all rights to pursue any affirmative defenses,  
15 Fourth Amendment or Fifth Amendment claims, and other pretrial  
16 motions that have been filed or could be filed.

17 WAIVER OF APPEAL OF CONVICTION

18 16. Defendant understands that, with the exception of an appeal  
19 based on a claim that defendant's guilty plea was involuntary, by  
20 pleading guilty defendant is waiving and giving up any right to  
21 appeal defendant's conviction on the offense to which defendant is  
22 pleading guilty. Defendant understands that this waiver includes,  
23 but is not limited to, arguments that the statute to which defendant  
24 is pleading guilty is unconstitutional, and any and all claims that  
25 the statement of facts provided herein is insufficient to support  
26 defendant's pleas of guilty.

WAIVER OF APPEAL AND COLLATERAL ATTACK

17. Defendant gives up the right to appeal all of the following: (a) the procedures and calculations used to determine and impose any portion of the sentence; (b) the term of imprisonment imposed by the Court, including, to the extent permitted by law, the constitutionality or legality of defendant's sentence, provided it is within the statutory maximum; (c) the fine imposed by the Court, provided it is within the statutory maximum; (d) the term of probation or supervised release imposed by the Court, provided it is within the statutory maximum; and (e) any of the following conditions of probation or supervised release imposed by the Court: the conditions set forth in Second Amended General Order 20-04 of this Court; the drug testing conditions mandated by 18 U.S.C. §§ 3563(a)(5) and 3583(d); and the alcohol and drug use conditions authorized by 18 U.S.C. § 3563(b)(7)

18. Defendant also gives up any right to bring a post-conviction collateral attack on the conviction or sentence, including any order of restitution, except a post-conviction collateral attack based on a claim of ineffective assistance of counsel, a claim of newly discovered evidence, or an explicitly retroactive change in the applicable Sentencing Guidelines, sentencing statutes, or statutes of conviction. Defendant understands that this waiver includes, but is not limited to, arguments that the statutes to which defendant is pleading guilty is unconstitutional, and any and all claims that the statement of facts provided herein is insufficient to support defendant's plea of guilty.

19. This agreement does not affect in any way the right of the United States to appeal the sentence imposed by the Court.

1                                    RESULT OF WITHDRAWAL OF GUILTY PLEA

2            20. Defendant agrees that if, after entering a guilty plea  
3 pursuant to this agreement, defendant seeks to withdraw and succeeds  
4 in withdrawing defendant's guilty plea on any basis other than a  
5 claim and finding that entry into this plea agreement was  
6 involuntary, then (a) the United States will be relieved of all of  
7 its obligations under this agreement; and (b) should the United  
8 States choose to pursue any charge that was either dismissed or not  
9 filed as a result of this agreement, then (i) any applicable statute  
10 of limitations will be tolled between the date of defendant's signing  
11 of this agreement and the filing commencing any such action; and  
12 (ii) defendant waives and gives up all defenses based on the statute  
13 of limitations, any claim of pre-indictment delay, or any speedy  
14 trial claim with respect to any such action, except to the extent  
15 that such defenses existed as of the date of defendant's signing this  
16 agreement.

17                                    EFFECTIVE DATE OF AGREEMENT

18            21. This agreement is effective upon signature and execution of  
19 all required certifications by defendant, defendant's counsel, and an  
20 Assistant United States Attorney.

21                                    BREACH OF AGREEMENT

22            22. Defendant agrees that if defendant, at any time after the  
23 signature of this agreement and execution of all required  
24 certifications by defendant, defendant's counsel, and the above-  
25 referenced prosecutors, knowingly violates or fails to perform any of  
26 defendant's obligations under this agreement ("a breach"), the United  
27 States may declare this agreement breached. All of defendant's  
28 obligations are material, a single breach of this agreement is

1 sufficient for the United States to declare a breach, and defendant  
2 shall not be deemed to have cured a breach without the express  
3 agreement of the USAO in writing. If the United States declares this  
4 agreement breached, and the Court finds such a breach to have  
5 occurred, then: (a) if defendant has previously entered a guilty plea  
6 pursuant to this agreement, defendant will not be able to withdraw  
7 the guilty plea, and (b) the United States will be relieved of all  
8 its obligations under this agreement.

9 23. Following the Court's finding of a knowing breach of this  
10 agreement by defendant, should the United States choose to pursue any  
11 charge that was either dismissed or not filed as a result of this  
12 agreement, then:

13 a. Defendant agrees that any applicable statute of  
14 limitations is tolled between the date of defendant's signing of this  
15 agreement and the filing commencing any such action.

16 b. Defendant waives and gives up all defenses based on  
17 the statute of limitations, any claim of pre-indictment delay, or any  
18 speedy trial claim with respect to any such action, except to the  
19 extent that such defenses existed as of the date of defendant's  
20 signing this agreement.

21 c. Defendant agrees that: (i) any statements made by  
22 defendant, under oath, at the guilty plea hearing (if such a hearing  
23 occurred prior to the breach); (ii) the agreed to factual basis  
24 statement in this agreement; and (iii) any evidence derived from such  
25 statements, shall be admissible against defendant in any such action  
26 against defendant, and defendant waives and gives up any claim under  
27 the United States Constitution, any statute, Rule 410 of the Federal  
28 Rules of Evidence, Rule 11(f) of the Federal Rules of Criminal

1 Procedure, or any other federal rule, that the statements or any  
2 evidence derived from the statements should be suppressed or are  
3 inadmissible.

4 COURT AND UNITED STATES PROBATION AND PRETRIAL SERVICES

5 OFFICE NOT PARTIES

6 24. Defendant understands that the Court and the United States  
7 Probation and Pretrial Services Office are not parties to this  
8 agreement and need not accept any of the USAO's sentencing  
9 recommendations or the parties' agreements to facts or sentencing  
10 factors.

11 25. Defendant understands that both defendant and the United  
12 States are free to: (a) supplement the facts by supplying relevant  
13 information to the United States Probation and Pretrial Services  
14 Office and the Court, (b) correct any and all factual misstatements  
15 relating to the Court's Sentencing Guidelines calculations and  
16 determination of sentence, and (c) argue on appeal and collateral  
17 review that the Court's Sentencing Guidelines calculations and the  
18 sentence it chooses to impose are not error, although each party  
19 agrees to maintain its view that the calculations in paragraph 13 are  
20 consistent with the facts of this case. This paragraph permits both  
21 the USAO and defendant to submit full and complete factual  
22 information to the United States Probation and Pretrial Services  
23 Office and the Court, even if that factual information may be viewed  
24 as inconsistent with the Factual Basis and Sentencing Factors agreed  
25 to in this agreement.

26 26. Defendant understands that even if the Court ignores any  
27 sentencing recommendation, finds facts or reaches conclusions  
28 different from those agreed to, and/or imposes any sentence up to the

1 maximum established by statute, defendant cannot, for that reason,  
2 withdraw defendant's guilty plea, and defendant will remain bound to  
3 fulfill all defendant's obligations under this agreement. Defendant  
4 understands that no one -- not the prosecutor, defendant's attorney,  
5 or the Court -- can make a binding prediction or promise regarding  
6 the sentence defendant will receive, except that it will be no  
7 greater than the statutory maximum.

8 NO ADDITIONAL AGREEMENTS

9 27. Defendant understands that, except as set forth herein,  
10 there are no promises, understandings, or agreements between the  
11 United States and defendant or defendant's attorney, and that no  
12 additional promise, understanding, or agreement may be entered into  
13 unless in a writing signed by all parties or on the record in court.

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PLEA AGREEMENT PART OF THE GUILTY PLEA HEARING

28. The parties agree that this agreement will be considered part of the record of defendant's guilty plea hearing as if the entire agreement had been read into the record of the proceeding.

AGREED AND ACCEPTED

UNITED STATES ATTORNEY'S OFFICE  
FOR THE CENTRAL DISTRICT OF  
CALIFORNIA


TRACY L. WILKISON  
United States Attorney

  
THOMAS RYBARCZYK  
Assistant United States Attorney

May 16, 2022  
Date

UNITED STATES DEPARTMENT OF  
JUSTICE, CIVIL RIGHTS DIVISION

KRISTEN CLARKE  
Assistant Attorney General

  
FARA GOLD  
Special Litigation Counsel  
NIKHIL RAMNANEY  
Trial Attorney

5/16/22  
Date

  
JOSE VIERA  
Defendant

5/9/22  
Date

  
CARLOS IRIARTE  
Attorney for Defendant

5/9/2022  
Date



CERTIFICATION OF DEFENDANT

I have read this agreement in its entirety. I have had enough time to review and consider this agreement, and I have carefully and thoroughly discussed every part of it with my attorney. I understand the terms of this agreement, and I voluntarily agree to those terms. I have discussed the evidence with my attorney, and my attorney has advised me of my rights, of possible pretrial motions that might be filed, of possible defenses that might be asserted either prior to or at trial, of the sentencing factors set forth in 18 U.S.C. § 3553(a), of relevant Sentencing Guidelines provisions, and of the consequences of entering into this agreement. No promises, inducements, or representations of any kind have been made to me other than those contained in this agreement. No one has threatened or forced me in any way to enter into this agreement. I am satisfied with the representation of my attorney in this matter, and I am pleading guilty because I am guilty of the charge and wish to take advantage of the promises set forth in this agreement, and not for any other reason.

JOSE VIERA  
Defendant

Date

5/4/22

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CERTIFICATION OF DEFENDANT'S ATTORNEY

I am JOSE VIERA'S attorney. I have carefully and thoroughly discussed every part of this agreement with my client. Further, I have fully advised my client of his rights, of possible pretrial motions that might be filed, of possible defenses that might be asserted either prior to or at trial, of the sentencing factors set forth in 18 U.S.C. § 3553(a), of relevant Sentencing Guidelines provisions, and of the consequences of entering into this agreement. To my knowledge: no promises, inducements, or representations of any kind have been made to my client other than those contained in this agreement; no one has threatened or forced my client in any way to enter into this agreement; my client's decision to enter into this agreement is an informed and voluntary one; and the factual basis set forth in this agreement is sufficient to support my client's entry of a guilty plea pursuant to this agreement.

  
CARLOS IRIARTE  
Attorney for Defendant

5/9/2022  
Date